



# CITY OF PORTLAND ENVIRONMENTAL SERVICES



1120 SW Fifth Avenue, Room 1000, Portland, Oregon 97204-1912 ■ Sam Adams, Commissioner ■ Dean Marriott, Director

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April 12, 2006

Eric Blischke  
Chip Humphrey  
United States Environmental Protection Agency, Region 10  
811 6<sup>th</sup> Avenue, 3<sup>rd</sup> Floor  
Portland, OR 97204-1390

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Environmental Cleanup Office

Dear Mr. Blischke and Mr. Humphrey:

The City of Portland appreciates the opportunity to submit its views on the Environmental Protection Agency and partners' December 2005 and February 2006 proposals for Portland Harbor Superfund Round 3 sampling and analysis. This third major round of sampling, which is likely to be undertaken in two phases, is widely viewed as the last substantial sampling effort before starting the assessment and design of cleanup alternatives. While additional sampling and analysis will be conducted in the remedial design and remedial action phases later in the Superfund process, Round 3 is intended to provide the remaining information to complete the remedial investigation and feasibility study (RI/FS) which will lead to an Environmental Protection Agency Record of Decision for the site.

The City has been an active member of the Lower Willamette Group since its inception in 2001. The City is appreciative that the members of the group have stepped forward to fund the Portland Harbor Superfund investigation and is pleased to be working with the group. The City itself is providing a substantial share of the funding for this work—25% of the roughly \$35 million invested to date—and is doing so in the interest of accelerating the investigation and eventual cleanup activities.

In participating in the group, the City has broad interests, not only as a potentially responsible party, but also as a municipal government with strong stewardship commitments and obligations in the Lower Willamette River. Further, the City has a long-term interest in maintaining strong working relationships and partnerships with the federal, state and Tribal entities involved in Portland Harbor. Because of this, the City necessarily weighs a broad range of factors in evaluating the Superfund sampling and analysis proposals made by EPA and its federal, state and Tribal partners and the LWG response to them.

The Round 3 proposals by EPA and the partners call for extensive additional sampling and analysis to refine the boundaries of the overall site and areas of potential concern and to fill information needs for the ecological and human health risk assessments. The City shares the agencies' and Tribes' desire to ensure that the site is fully characterized and that risks are accurately defined so that proposed cleanup remedies will have a high likelihood of success in reducing site risks to acceptable levels.



On April 7, 2006, the Lower Willamette Group submitted extensive comments on the agencies' and Tribes' sampling and analysis proposals. A sizable number of the comments question whether the additional sampling and analysis requested by EPA and the partners are needed to complete the RI/FS. The City believes these comments raise significant issues and agrees with LWG that it is important that the data collected in Round 3 are deemed essential for a comprehensive and thorough RI/FS, and that they should be useful in making decisions on the site. The City encourages EPA and the partners to examine the rationale for and use of the requested information more closely and to provide additional detail on its need and use. However, the specific views expressed in the LWG correspondence on these issues should not be construed as representing the views of the City.

The City believes it is important to work through all outstanding issues in an organized and objective manner and, if possible, to reach consensus on what is expected to be the last round of field sampling. The City will work with all parties to help ensure these discussions can occur in a constructive and productive manner.

Below we offer some observations on several of the key issues that will be under discussion in the months ahead.

**THE IMPORTANCE OF EXPEDITED DECISIONS ON ROUND 3 WORK AND THE CONTINUING IMPORTANCE OF A COLLABORATIVE APPROACH.** It is critical that the Round 3 work not be delayed by protracted disagreements on the nature and scope of the remaining sampling and analysis. The resolution of the outstanding issues may require a significant number of extended meetings. The City encourages all parties to commit the resources necessary to resolve these differences as rapidly as feasible. To ensure that decisions at this important stage are reached in an effective and transparent manner, we believe the Community Advisory Group should be updated and provided an opportunity to offer comment as these deliberations proceed.

To date, the agencies and Tribes, the City and the Lower Willamette Group have explicitly pursued a collaborative approach to the work on the site. There have been disagreements from time to time, but those have been resolved and the work has proceeded. It would be unfortunate if the next steps in the process were characterized by more formal and time-consuming dispute resolution or other formal proceedings rather than an efficient and cooperative resolution that allows the work to proceed. We are confident that the apparent differences can be resolved if parties will continue to employ a collaborative approach.

To facilitate these discussions, our recommendation is that the legal matters in dispute should be segregated—with whatever context is needed—so they can be taken up in appropriately structured legal discussions. While it is important to understand the very real linkages between these legal, policy and technical issues, it would be helpful to have the competing legal positions clearly laid out in appropriate detail and, if possible, resolved so that the technical and policy discussions can proceed without unnecessary legal uncertainty. Examples of legal issues include the disagreement over the use of Maximum Contaminant Levels and Ambient Water Quality Criteria and differing interpretations of the Consent Order and Statement of Work as they relate to upstream and lateral site boundary sampling and analysis.

**ECOLOGICAL RISK ASSESSMENT.** The ecological risk assessment continues to be a prominent area of disagreement. This is not surprising since the parties have not yet developed a shared view of how ecological risk will be assessed at the site. While there is also some disagreement about the human health assessment—and human health may be a broader issue for the site as a whole—it appears that ecological risk is a more complex undertaking. Recently, EPA, its partners and LWG agreed on the need for a comprehensive ecological risk framework. A discussion draft framework was prepared by LWG and is currently under review by the parties. Until those discussions proceed further, it will not be helpful for parties to take hardened positions concerning what is appropriately included and excluded in the assessment. There is EPA guidance that can be applied in these discussions, but, at the end of the day, we will need a mutually agreed upon approach to this central aspect of the site remedial investigation.

#### **THE COMPREHENSIVE DATA REPORT AND THE CONCEPTUAL SITE MODEL.**

A major document in the Portland Harbor Superfund process—the Comprehensive Data Report—is scheduled for completion and release this fall. This report will provide the parties and the interested public a first opportunity to review and interpret the assembled data. In addition, it will enable the parties to flesh out the remainder of the Round 3 sampling and analysis needs. Again, taking hardened positions on the remainder of the Round 3 analysis without benefit of this comprehensive report is not likely to be productive.

Work on the related Conceptual Site Model has lagged on this site and will be important in shaping the remaining work. The basic understanding of the site dynamics still needs to be refined for several purposes: (1) to guide future assessments; (2) to help organize the assembled data and present a clear picture of how the Portland Harbor site functions; and (3) to help explain the site assessment and cleanup work to other parties and the public. To meet these objectives, we need to be sure that the site model is well-developed.

**STORMWATER ASSESSMENT.** The City believes that a comprehensive, balanced and well-crafted approach to the evaluation of stormwater will be needed to assess recontamination potential. We have been working on this issue and a broader effort to accelerate source control with the state Department of Environmental Quality for some time under a formal City/DEQ Intergovernmental Agreement. We have also explored stormwater issues with EPA and its partners.

The City wants to be sure stormwater issues are considered thoroughly so that we can be confident that stormwater of all kinds—industrial and non-industrial—will not impede the in-water cleanup efforts or potentially recontaminate the site. In addition, stormwater information—coupled with analysis of resuspension of contaminants and upstream contributions—may help in the evaluation of the apparent differences between contaminant levels being observed in sediments and tissues. The overall effort to evaluate stormwater is hampered by the lack of information currently available in the site summaries that have been submitted to date and those deficiencies will need to be addressed with a comprehensive approach to fill the information gaps.

**SITE BOUNDARIES AND UPSTREAM STUDIES AND ANALYSIS.** The question of the upstream boundary of the existing Superfund site is still under discussion. That boundary will be set formally by EPA at a later date. At this point, EPA has indicated that if analysis suggests substantial levels of contamination from upstream, EPA would need to discuss this with other potentially responsible parties beyond the current membership of the LWG. That seems an appropriate way to proceed on this issue.

It is clear that additional sediment and water quality information is needed to assess recontamination potential from upstream sources and to help set the contaminant background levels for use in further site work. In addition, we will need a solid understanding of upstream conditions to inform the evaluations of cleanup effectiveness in the future. Whether additional tissue data upstream of the site is needed to help evaluate background or for other purposes is an open question in the City's view and we should explore that in the upcoming discussions among the parties.

**NATURAL RESOURCE DAMAGES ASSESSMENT AND SUPERFUND CLEANUP.** There are several issues related to salmon, sturgeon and lamprey that remain unresolved. These are relevant in the Superfund cleanup and the related Natural Resource Damages Assessment process. From the beginning, the City has advocated an approach that would consider natural resource damages and the Superfund cleanup concurrently to promote a more cost-effective and integrated cleanup and restoration program. As we proceed with discussions on these issues, we should watch for opportunities to integrate the work and gain savings of time and money.

The City is funding a formal cooperative assessment with the federal, state and Tribal Natural Resource Trustees and is still hoping that others will join that process so the natural resource damages' work can be expedited.

**FEDERAL, STATE AND TRIBAL POLICY PARTICIPATION.** The Portland Harbor is exceptional in the number of agency and Tribal partners involved in the site assessment work. This has presented special challenges, but we believe the participation by the broad range of federal, state and Tribal interests has been clearly beneficial. The City remains appreciative of the amount of time and resources devoted to this work by the Environmental Protection Agency, its federal and state partners and six Tribal governments. The City has encouraged a full partnership with these Tribal governments in the Superfund and other Lower Willamette restoration activities, and we continue to believe that their involvement and insights early in the process will help ensure that relevant issues can be considered and addressed in a timely manner.

4/12/2006

City of Portland Views on Round 3 Data Gaps

**PUBLIC INVOLVEMENT.** To date, much of the work on the site has focused on largely technical and somewhat esoteric analytical issues. In the months ahead, particularly as the site data are summarized and ecological and human health risks are evaluated, it will become increasingly important to ensure that members of the interested public are able to follow and be involved in the work on the site. In this connection, we commend the volunteer members of the Community Advisory Group who have invested considerable time evaluating and commenting on the overall direction of the site work. We look forward to increased involvement of the advisory group and the public in the cleanup of Portland Harbor and related Lower Willamette restoration efforts.

The City will work hard to promote productive discussions with the Lower Willamette Group, EPA and the agency and Tribal partners as we endeavor to resolve the outstanding Portland Harbor site assessment issues expeditiously.

Sincerely,



Rick Applegate  
Superfund Administrator  
Portland Harbor

cc: Jim Anderson, DEQ  
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